

RESOLUTION NO. 15-021

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
RECOMMENDING THE CITY COUNCIL DENY ZONING AMENDMENT NO. 15-0003
TO INTRODUCE AN ORDINANCE CONDITIONALLY ALLOWING PLACES OF
ASSEMBLY USES IN THE INDUSTRIAL ZONES AND A USE PERMIT NO. 15-0008
FOR A MOSQUE AND SHARED PARKING AT 372 – 374 TURQUOISE STREET**

WHEREAS, on April 28, 2015, an application was submitted by Mark Tiernan to amend the Milpitas Zoning Code to conditionally allow places of assembly uses in the industrial zones, and for a conditional use permit for a mosque at 372 to 374 Turquoise Street; and

WHEREAS, an environmental assessment is not required because of the application's inconsistencies with the General Plan and Zoning Code pursuant to the California Environmental Quality Act (CEQA); and

WHEREAS, on June 24, 2015, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

SECTION 1: The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2: The project is exempt from environmental review pursuant to Section 15270 of the CEQA Guidelines.

SECTION 3: *Zoning Text Amendment (Section XI-10-57.02.G.3) The Planning Commission makes the following findings based on the evidence in the public record in opposition to Zoning Text Amendment No. ZA15-0003:*

1. *The proposed amendment is **inconsistent** with the General Plan.*

The City of Milpitas' General Plan is the City's constitution. The General Plan guides and directs City actions, and State Law requires that any project must be consistent with the General Plan. The requested zone change to allow "places of assembly" uses to occupy any industrially zoned land in the City of Milpitas is inconsistent with the City of Milpitas' General Plan.

The General Plan contains two industrial land use categories that provide a broad range of uses for the industrial areas of the City. These categories and uses are as follows:

- **Manufacturing.** This classification encompasses a variety of light and heavy industrial activities, such as manufacturing, packaging, processing, warehousing and distribution, and ancillary support uses.
- **Industrial Park.** This classification accommodates research, professional, packaging and distribution facilities in a park-like setting, free from noise, odor and other such nuisances.

The Manufacturing and Industrial Park categories target manufacturing, processing, distribution, and research type land uses. These uses are opposite in nature from assembly type uses. “Places of assembly” uses involving the gathering of people for a common purpose while manufacturing and industrial park land uses involve utilizing raw materials to produce, store, and distribute finished goods and products. The heavy intensity of these industrial uses conflicts with the quiet gathering of people because it exposes people to potentially hazardous byproducts from industrial uses. Therefore, “places of assembly” uses are incompatible with industrial uses.

Furthermore, the proposed zoning text amendment conflicts with numerous Guiding Principles and Implementing Policies of the General Plan, including the following:

Guiding Principles:

- 2.a-G-1** Maintain a land use program that balances Milpitas' regional and local roles by providing for a highly amenable community environment and a thriving regional industrial center.

Inconsistent: The proposed zoning text amendment would undermine this Guiding Principle. The zoning text amendment would expand the range of non-industrial related land uses in industrial zones. Infiltration of non-industrial land uses would eliminate the opportunity for industrial uses to occupy an area that the City has designated, planned for and encouraged to thrive with industrial uses. Assembly uses would erode the economic base and the vitality of the industrial zone because it enables a transition of the area away from the industrial districts' purpose as a key manufacturing, research, warehousing, distribution, and employment center. Therefore, the requested text amendment is inconsistent Guiding Principle 2.a-G-1 because it erodes the economic base and the vitality of the City's industrial center.

- 2.a-G-8** The City should consider a long term approach to managing its income/job generating lands and the impacts of development on public services.

Inconsistent: The proposed zone change would have detrimental effects to the long-term management of the City's income/job generating lands. Assembly uses established with a use permit would be able to occupy industrially zone properties in perpetuity. This would effectively remove these properties from any type of income/job generating purposes from the City in the short-term and long-term time

horizons. Therefore, the requested zone text amendment is inconsistent with Guiding Principle 2.a-G-8.

- 2.a-G-11** Promote land use policy and implementation actions that improve the City's fiscal sustainability. Maintain and enhance the City's projected total net revenue through amendments made to the General Plan. Discourage proposed re-zonings or other discretionary land use actions that could significantly diminish revenue to the City or significantly increase the City's service costs to the City without offsetting increases in revenue.

Inconsistent: The proposed re-zoning would diminish revenue to the City by eliminating potential for commercial uses to support industrial land uses. The industrial districts are intended to be areas that potentially lead to business retention, employment opportunities, and economic development. Allowing uses not compatible with the purpose and intent of these districts would be detrimental to investments in property and improvements in the vicinity by starting a transition of the area away from its purpose as a key manufacturing and employment center. Therefore, the project is inconsistent with Guiding Principle 2.a-G-11.

Implementing Policies:

- 2.a-I-4** Publicize the position of Milpitas as a place to carry on compatible industrial and commercial activities with special emphasis directed toward the advantages of the City's location to both industrial and commercial use.

Inconsistent: Approval of the proposed zoning text amendment would create incompatible land uses in industrial zones, and would disadvantage the City of Milpitas as a place for industrial activities. Industrial land uses are associated with the heavy intensity use of raw materials for the purpose of developing, manufacturing, storing and shipping products. "Places of assembly" uses are associated with the gathering of people for a common purpose. The fundamental purpose of the industrial and assembly land use demonstrates their incompatibility, and mixing these two disparate uses creates difficulties for each. Industrial businesses would not want to be located adjacent to an assembly use because their operations may be restricted to preserve the general welfare of people. This incompatibility would discourage industrial uses in the City of Milpitas. Further, there is also the simple impact of perception. Industrial businesses could perceive that the City does not care enough about the tax generating businesses because they are allowing non-tax generating uses within the restricted districts. Therefore, the requested zoning text amendment would create incompatible uses that would disadvantage the City as a place to conduct industrial activities.

- 2.a-I-9** Prohibit encroachment of incompatible uses into industrial lands, and prohibit nonindustrial uses which would result in the imposition of

additional operational restrictions and/or mitigation requirements on industrial users due to land use incompatibility issues.

Inconsistent: The requested zone text amendment results in the encroachment of incompatible land uses and nonindustrial uses in industrial zones, which this policy expressly prohibits. As previously discussed, industrial land uses involve high intensity use raw materials for the manufacturing, storage, and shipment of products. These industrial uses frequently result in loud noise, diminished air quality, long operating hours, and large vehicle deliveries and shipments. Assembly type uses stand in sharp contrast to industrial uses. Assembly uses involve gathering people in a location for a common purpose. Assembly uses in an industrial zone would expose people to the byproducts of industrial operations, which creates a potentially hazardous situation. This hazardous situation defines and exemplifies the essence of incompatible land use uses. The City would need to impose operational restrictions to resolve conflicts and incompatibilities between assembly and industrial land uses. These operational restrictions conflict with Implementing Policy 2.a-I-9, and because of this inconsistency the requested zone amendment cannot be supported.

2.a-I-14 When new uses are proposed in proximity to existing industrial uses, incorporate conditions upon the new use to minimize its negative impacts on existing nearby land uses and to promote the health and safety of individuals at the new development site.

Prohibit social organization uses within industrial areas. Consider these uses in other areas in the City.

Inconsistent: The proposed zone amendment would facilitate a type of social organization in the industrial districts. This is inconsistent with Implementing Policy 2.a-I-14.

2. *The proposed amendment will not adversely affect the public health, safety and welfare of the residents of Milpitas.*

The proposed zoning amendment will adversely affect the public health, safety and welfare of the residents of Milpitas. The project is inconsistent with General Plan Guiding Principles and Implementing Policies by proposing to amend the Zoning Code to conditionally allow “places of assembly” uses in the industrial zones. These Principles and Policies are designed to protect the public health, safety and welfare. A project that conflicts with these standards would therefore be detrimental to the health, safety and welfare of the residents of Milpitas.

SECTION 4: *Conditional Use Permit (Section XI-10-57-04(F)) - The Planning Commission makes the following findings based on the evidence in the public record in opposition of Conditional Use Permit No. UP15-0008:*

1. *The proposed use, at the proposed location **will be** detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The proposed project will be detrimental to the property and vicinity relative to public health, safety, and general welfare in that the location, size, design, and operating characteristics of the proposed facility will not provide adequate parking for the site and is incompatible with the surrounding land uses. The proposed project is an assembly use located in a Heavy Industrial (M2) zoning district. The site is surrounded by industrial offices and manufacturing uses, which are incompatible with the proposed assembly use. The City of Milpitas intends the industrial districts to be areas that lead to expansion of business, employment opportunities, and economic development. Allowing uses not compatible with the purpose and intent of these districts would be detrimental to investments in property and improvements in the vicinity by enabling a transition of the area away from the industrial districts' purpose as a key manufacturing and employment center.

The City of Milpitas intends the industrial districts to be areas that lead to expansion of business, employment opportunities, and economic development. Allowing uses not compatible with the purpose and intent of these districts would be detrimental to the public health, safety and general welfare because the very young or elderly, who are typically associated with places of assembly, would be located adjacent to uses designed for heavy industrial purposes. The presence of sensitive receptors may impact the decision of prospective industrial uses from locating near a "places of assembly" uses when their operation consists of processes that could be detrimental to that population. Further, there is also the simple impact of perception. Industrial businesses could perceive that the City does not care enough about the tax generating businesses because they are allowing non-tax generating uses within the restricted districts.

2. *The proposed use is **inconsistent** with the Milpitas General Plan, specifically:*

As analyzed in detail in the staff report and herein, the proposed Project is inconsistent with the Milpitas General Plan.

The requested use permit for an assembly use in the Heavy Industrial Zone (M2) is inconsistent with the City of Milpitas' General Plan.

The General Plan contains two industrial land use categories that provide a broad range of uses for the industrial areas of the City. These categories and uses are as follows:

- **Manufacturing.** This classification encompasses a variety of light and heavy industrial activities, such as manufacturing, packaging, processing, warehousing and distribution, and ancillary support uses.

- **Industrial Park.** This classification accommodates research, professional, packaging and distribution facilities in a park-like setting, free from noise, odor and other such nuisances.

The Manufacturing and Industrial Park categories target manufacturing, processing, distribution, and research type land uses. These uses are opposite in nature from assembly type uses. “Places of assembly” uses involving the gathering of people for a common purpose while manufacturing and industrial park land uses involve utilizing raw materials to produce, store, and distribute finished goods and products. The heavy intensity of these industrial uses conflicts with the quiet gathering of people because it exposes people to potentially hazardous byproducts from industrial uses. Therefore, “places of assembly” uses are incompatible with industrial uses.

Specifically, the project is inconsistent with the following Guiding Principles and Implementing Policies:

Guiding Principles:

2.a-G-1 Maintain a land use program that balances Milpitas' regional and local roles by providing for a highly amenable community environment and a thriving regional industrial center.

2.a-G-8 The City should consider a long term approach to managing its income/job generating lands and the impacts of development on public services.

2.a-G-11 Promote land use policy and implementation actions that improve the City's fiscal sustainability. Maintain and enhance the City's projected total net revenue through amendments made to the General Plan. Discourage proposed re-zonings or other discretionary land use actions that could significantly diminish revenue to the City or significantly increase the City's service costs to the City without offsetting increases in revenue.

Implementing Policies:

2.a-I-4 Publicize the position of Milpitas as a place to carry on compatible industrial and commercial activities with special emphasis directed toward the advantages of the City's location to both industrial and commercial use.

2.a-I-9 Prohibit encroachment of incompatible uses into industrial lands, and prohibit nonindustrial uses which would result in the imposition of additional operational restrictions and/or mitigation requirements on industrial users due to land use incompatibility issues.

2.a-I-14 When new uses are proposed in proximity to existing industrial uses, incorporate conditions upon the new use to minimize its negative

impacts on existing nearby land uses and to promote the health and safety of individuals at the new development site.

Prohibit social organization uses within industrial areas. Consider these uses in other areas in the City.

3. The proposed use is **inconsistent** with the Milpitas Zoning Ordinance:

As analyzed in detail in the staff report and herein, the proposed Project is inconsistent with the Milpitas Zoning Ordinance. Specifically, the project would generate a demand for parking that exceeds the number of spaces supplied onsite. The table below provides an analysis of the parking requirements for the site, pursuant to Table 53.09-1 of the Milpitas Municipal Code.

Table
Parking Summary

Use	Area	Standard	Parking Spaces Required
Existing Industrial Uses	13,981 sq. ft.	1 space per 300 sq. ft.	47 spaces
Proposed Assembly Use:			
Prayer Halls	4,282 sq. ft.	1 space per 5 seats	72 spaces
Multi-Purpose Room	2,735 sq. ft.;	1 space per 200 sq. ft.	14 spaces
Office	258 sq. ft.	1 space per 240 sq. ft.	1 space
Bookstore	180 sq. ft.	1 space per 200 sq. ft.	1 space
Reading, Conference, Quiet Rooms	1,423 sq. ft.	1 space per 240 sq. ft.	6 spaces
TOTAL REQUIRED			141 spaces required
SPACE PROVIDED ONSITE			126 spaces provided
New Stalls Added			2
TOTAL PARKING ONSITE			128 spaces
DEFICIT			13 space deficit

As Table 4 demonstrates, the site is under parked by approximately 13 spaces, and it cannot accommodate the proposed assembly use.

Staff worked with the applicant, conducted a variety of parking analyses, and discovered that even the most beneficial parking allocation still exceeded the parking supply provided and proposed for the site. The first step was to reduce the number of spaces for the prayer halls. The Zoning Code states that where no fixed seating is proposed, one space is needed per five seats, and one seat is equal to 7 square feet. The assembly use does not propose fixed seats in the prayer halls. Therefore, a strict interpretation of the Zoning Code would yield 122 parking spaces for the prayer hall alone. However, the applicant's site plan indicates that there will be 358 prayer spaces. Prayer spaces consist of an area where prayer rugs are placed for congregants

to pray, which makes them similar to a seating space. Based on the spirit of the parking requirements in the Zoning Code, the prayer halls generate a demand for 72 parking spaces. Further, the multipurpose room parking requirement was reduced from 27 spaces to 14 spaces because there are no fixed seats proposed for the room. Given these two changes, the total number of parking spaces for all uses in the building yields 141 parking stalls. This amount exceeds the 126 parking spaces provided onsite.

The addition of the mosque would generate a demand for 141 spaces, while the site contains 126 parking spaces. The applicant has proposed restriping the parking lot and adding two parking spaces onsite. This proposal would increase the number of spaces onsite to 128 parking stalls. Additionally, the applicant has requested a use permit for a shared parking agreement. The proposed shared parking agreement would use 13 spaces from the existing tenants to satisfy the applicant's parking requirements.

The proposed shared parking agreement is inconsistent with the provisions for shared parking in the City's Zoning Code. Shared parking is addressed in Section XI-10-53.11 of the Milpitas Zoning Code. Section XI-10-53.11 states that shared parking is applicable to mixed-use developments with one or more businesses that are complimentary, ancillary or support other activities. The proposed shared parking agreement is inconsistent with the shared parking provisions in two key areas.

The shared parking agreement section of the Zoning Code is intended for mixed-use developments. Examples of mixed-use developments described in the shared parking section of the Zoning Code consist of a mixture of residences, office, commercial, and educational uses. The Code does not include industrial uses as a type of mixed-use development. While the building consists of a mixture of uses, the mixture of uses is not historically interpreted as a mixed-use development because it does not integrate educational, commercial, office, or residential uses in one building. Instead, the project would introduce an assembly use to an area intended for industrial uses, which creates incompatible uses that are not typical of mixed-use developments.

The proposed assembly use is not a complimentary, ancillary or support related use in relationship to the industrial uses in the building. The proposed assembly use operates independently of the existing industrial uses in the building. Attendees would have minimal reasons to service other uses in the building because the other uses are professional businesses focused on a specific purpose. The purpose of these industrial offices is for business expansion and development of their companies. The assembly use consists of the gathering of people for prayer, community events, and personal growth. These functions of the assembly use do not support business expansion because they are unrelated to the purposes of the industrial businesses. Therefore, the project does not constitute a mixed-use development nor does the assembly use provide a complimentary, ancillary or support related use. The shared parking proposal does not constitute a solution to the 13-space parking deficiency onsite.

SECTION 5: The Planning Commission of the City of Milpitas hereby **adopts this Resolution No. 15-021 recommending the City Council deny Zoning Amendment No. ZA15-0003 to amend the Zoning Code to conditionally allow places of assembly uses in the Light Industrial (M1), Heavy Industrial (M2), and Industrial Park (MP) zones and Conditional Use Permit No. UP15-0008 to allow a mosque and shared parking agreement at 372 – 374 Turquoise Street, subject to the findings herein.**

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Milpitas on July 8, 2015.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on July 8, 2015 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal				
Larry Ciardella				
Hon Lien				
Demetress Morris				
Rajeev Mandnawat				
Gurdev Sandhu				
Ray Maglalang				
Zeya Mohsin (alternate)				